

# Charter Medical Limited Terms and Conditions

- SALE OF GOODS:** The terms and conditions set forth below between the Division of Fenner PLC whose name and address is shown on the face of this invoice hereinafter referred to as "Seller" and the party to whom this Invoice is submitted; hereinafter referred to as "Buyer", constitute an offer on the part of the Seller upon such terms and conditions. In this offer responds to or follows any request for quotation or purchase order which could be reasonably construed as an "offer" from Buyer and which offer contains terms and conditions different from and additional to those set forth below, then this offer shall not constitute an acceptance of Buyer's offer. Seller's acceptance of such "offer" is expressly conditioned on Buyer's assent to the terms and conditions set forth below. As hereinafter used, "goods" shall mean the personal property (including any services incident thereto) specified in this invoice.
- PRICES:** Prices quoted in this invoice are F.O.B. Sellers plant. Prices are understood to be commercial specifications and cover dimensions, finishes, tempers, etc. Which are produced commercially and to commercial tolerances. Prices do not include any federal, state or local taxes, including but not limited to sales, excise, gross income, occupation, use and similar taxes. Wherever applicable such tax or taxes will be for the account of Buyer and may be added to the invoice as a separate charge to be paid by Buyer. Prices on any undelivered goods covered by this contract are subject to further increase (a) due to increase in cost to the Seller of materials used in the manufacture, (b) as a result of restrictions or regulations imposed under any agreements, codes, or license made or issued pursuant to federal or state law, decrees or orders or (c) as a result of increase in labor costs, providing that this clause shall not be operated to fix a price in violation of any price regulations of the United States Government. Seller shall notify Buyer of any price increase arising for any of the above reasons and within fifteen (15) days of such notice. Buyer may notify Seller that Buyer will refuse to accept delivery at the higher price, but in such event Seller, at its option, may resend the contract. Prices quoted for goods to be shipped outside the continental United States are based on international currency exchange rates in effect at the time of quotation or acknowledgment. Seller reserves the right to change its prices at any time prior to shipment if exchange rates vary. Unless otherwise specifically provided any quantity discount applicable to the sales covered by this Invoice shall apply on to sales of goods made by the Division of Fenner PLC whose name and address is shown on the face of this Invoice, and such discount shall be computed solely on the basis of goods sold to Buyer by such division.
- TERMS OF PAYMENT:** Payment for the purchase of goods hereunder shall be made on the terms set forth on the face of this Invoice, except that if no such terms are provided, payment shall be net, cash thirty (30) days after the date of invoice. Notwithstanding the above, goods being shipped to foreign countries may be subject to a down payment with the order and the balance through and irrevocable Letter of Credit established through and confirmed by a New York Bank. The obligations to make payment shall continue without regard to any warranty obligations made hereunder by Seller and without regard to whether Buyer has made or may make any inspection of the goods. A finance charge of one and one half percent (1 1/2 %) per month (or the highest rate allowed by if this finance charge would be in violation of law) will be applied to any outstanding balance. Buyer shall pay Seller any reasonable expenses incurred by Seller for collection from Buyer of money due and unpaid, including reasonable attorney's fees and court or arbitration costs. If Buyer fails to pay any amount when due, or the financial responsibility of the Buyer becomes impaired or unsatisfactory in the reasonable judgment of Seller, Seller may, at its option and without prejudice to other lawful remedies, cancel all or any part of this order. No forbearance, course of dealing or prior payment shall affect the rights of Seller. Buyers agree to authorize its creditors to disclose to Seller information concerning Buyer's credit worthiness upon Seller's request. Any early payment discount provided on the face of this invoice shall be on the purchase price only, exclusive of freight or transportation, taxes and other charges.
- SHIPMENTS AND PERFORMANCE:** Shipping dates are approximate, and time shall not be the essence in any contract created by the acceptance of this order. If shipment is delayed for over one hundred and twenty (120) days, Buyer may reject the goods only if the Buyer will sustain substantial damage as a result of such delay. Unless otherwise expressly agreed in writing, (a) all sales are made F.O.B. point of shipment, (B) Seller shall have the right to make shipment in installments and (c) delay in shipment of any installment or fail to ship any installment shall not relieve Buyer of its obligation to accept remaining installments. Where special cases are required or other than standard packing is necessary, the expense involved will be charged to Buyer. Orders are subject to a ten percent (10%) over-run or under-run.
- FORCE MAJEURE:** Seller shall not be held responsible for any delay or failure to perform its obligations hereunder in whole or in part due directly or indirectly, without limitations, to war, epidemics, flood, acts of God, accidents, shortage of transportation, blockades, embargos, federal state, municipal, or any other governmental action or regulation, strikes or other labor troubles, fire damage to, or destruction in whole or in part of merchandise or manufacturing plant, lack of, or inability to obtain, materials, labor fuel, or supplies, restraining orders or injunctions of any court of judge or any other causes, contingencies or circumstances within or without the United States, not subject to this control which prevent or substantially hinder the manufacture shipment or delivery of the goods. Occurrence of any of the above shall, without liability to Seller, excuse Seller from future performance of this agreement or at its election, extend the time of performance by the time or times measured by any such cause or causes of delay. In any event, if any shipment shall be delayed six (6) or more months because of any of the aforesaid causes, either party shall have the right by written notice to the other to cancel that shipment and the balance, if any, of this contract and, in such event, neither part shall be liable to the other for any losses or damages arising out of such cancellation.
- BUYER DELAY AND STORAGE:** In the event that Buyer is unable or unwilling to accept delivery of goods at time of completions and/or shipment, Seller shall invoice Buyer for the full purchase price as if shipment had been made. If Seller is able to store the goods in its own facilities, Seller shall the right to impose on Buyer a reasonable charge for handling and storage for the period of such storage. Buyer shall pay Seller for cost of storing the goods, including a reasonable charge for storage if Seller stores the goods on its property. Goods held for Buyer under this provision shall be held by Buyer's sole risk. Seller shall not be responsible for any loss or damage to the goods during such storage, and in no event shall Seller be liable for loss of use or for any indirect incidental, or consequential damages resulting from any damage or loss to the goods while stored by Seller, or by any other entity at Seller's request, on Buyer's behalf.
- WARRANTY, REMEDY AND LIMITATION OF LIABILITY:** Seller warrants that at the time of shipment to Buyer the goods shall be free of defects in workmanship and material under normal use and service and shall conform to contract specifications and be within the limits and sized published by Seller, subject to Seller's standard tolerances for variations. Notwithstanding the above, if Buyer has been provided a sample or model or (ii) conform to the contract specifications and fall within the limits and sizes published by Seller, subject to standard tolerances, for variations. Seller shall have no liability to Buyer if Buyer purchase order omits a specification and Seller fills the order using goods that substantially conform to a standard or customary specification. In no event shall Seller be liable for any defective good if examination discloses that the good has been taxed beyond its normal capacity of the defective condition of such good was caused by misuse, abuse, improper installation or application, improper maintenance or repair, alteration, accident or negligence in use, storage, transportation or handling. ALL OTHER WARRANTIES, DIRECT OR IMPLIED, INCLUDING THE IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PUPOSE, ARE HEREBY EXCLUDED. Buyer agrees to inspect goods immediately upon receipt and to give written notice to Seller of the precise nature of any quantity objection or claim that the goods breach any warranty provided hereunder. Such written notice shall be given (a) within fourteen (14) days or receipt if the claim is to quantity and (b) within thirty (30) days if the claim is the breach of warranty. Seller shall thereupon be afforded a prompt and reasonable opportunity to inspect the goods. If Buyer shall fail to give such notice or provide such opportunity to inspect, the goods shall be deemed to conform with the terms and the contact and Buyer shall be bound to accept and pay for the goods in accordance with the terms of the contract. Buyer expressly waives any rights Buyer may have to revoke or refuse acceptance after such of the aforesaid fourteen (14) or thirty (30) day periods as may be applicable. If Buyer provides timely notice and reasonable opportunity to inspect then (1) If the claim is the shortage in excess of ten percent (10%) of the entire order, Buyer may require Seller to make up the shortage within a reasonable time of Seller's receipt of the notice: and (2) If the claim is for breach of warranty, Seller may, at its option, either repair or replace said nonconforming goods or repay the price thereof. If Seller requests the return of the nonconforming goods, the obligations hereunder for breach of warranty shall not arise unless the goods have returned to Seller within thirty (30) days after such request is made. Buyer shall bear all costs of shipping and installing any replacement goods. **The aforesaid obligations of Seller to correct deficiencies in quantities in excess of ten percent (10%) and to repair or replace defective or nonconforming goods or repay the purchase price thereof is expressly agreed by the parties to be the limit of Seller's liability and Buyer's sole exclusive remedy for quantity deficiencies and breach of warranty. IN NO EVENT SHALL THE SELLER BE LIABLE FOR LOSS OF USE OR FOR ANY INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING BUT LIMITED TO CONSEQUENTIAL DAMAGES FOR PERSONAL INJURIES. THE PARTIES EXPRESSLY AGREE THAT THIS DISCLAIMER SHALL REMAIN IN EFFECT IN THE EVENT THAT BUYERS SOLE AND EXCLUSIVE REMEDY FAILS OF ITS ESSENTIAL PURPOSE.** Buyer, if a reseller, shall include in its terms and conditions of sale an effective disclaimer of warranties and limitations of liability at least as restrictive as those contained herein. In any event BUYER ASSUMES ALL RISKS AND AGREES TO INDEMNIFY AND HOLD THE SELLER HARMLESS AGAINST ALL CLAIMS AND LIABILITY (INCLUDING LIABILITY BASED ON A CLAIM THAT SELLER IS NEGLIGENT OR STRICTLY LIABLE) ARISING: (1) OUT OF ANY PROPERTY MADE IN WHOLE OR IN PART FROM THE GOODS SUPPLIED UNDER THE TERMS OF THIS CONTRACT, AND (2) AS A RESULT OF USE OR POSSESSION OF THE GOODS SUPPLIED UNDER THE TERMS OF THIS CONTRACT. Any technical advice furnished by Seller, with respect to any use of the goods by Buyer, shall not affect the limitations on the Seller's warranties or Buyers' agreement in indemnity as set forth above. Buyer acknowledges that this agreement is for the purchase of goods, not services and that Seller shall therefore have no liability to Buyer for any harm or loss caused by gratuitous advice received by Buyer from any Seller's agents or employees.
- PATENT, TRADEMARK AND UNFAIR COMPETITION INDEMNIFICATIONS:** With respect to goods manufactured solely to Seller's designs or specifications, Seller shall defend at its own expense any action brought against Buyer to the extent that it is based on a claim that any such goods or any parts thereof furnished hereunder constitute an infringement of any patent, trademark, copyright or industrial design and the Seller will pay any costs and damages finally awarded against Buyer which are in any such action which are attributable to such claim, but such defense and payment are conditioned on the following: (1) that the Seller will be notified promptly in writing by Buyer of any notice of such claim. (2) the Seller will have sole control of the defense in any action of such claim and all negotiations for its settlement and compromise, and (3) should the Seller's products become, or in the Seller's opinion likely to become the subject of a claim or infringement of a patent, trademark, copyright or industrial design the Buyer will permit the Seller at its option to replace or modify in the same so that it becomes not infringing or to grant to Buyer a credit for such products as depreciated under the double declining balance method over the useful life of the product, but in any event no longer than five years, and accept its return. Buyer shall indemnify, defend and hold Seller harmless against any expenses, damages, cost or losses resulting from any suit or proceeding brought for infringement of patents or trademarks or unfair competition (1) relating to the use or sale of any Seller's goods in any combination, method, or process and/or (2) arising out of compliance by Seller with Buyer's designs, specifications or instructions. The foregoing states the entire liability of Seller with respect to infringement of patents by Seller's goods or any parts thereof.
- INJURY TO BUYER'S AGENTS:** In the event that an agent or employee of Buyer is injured while on Seller's property. Buyer agrees to defend indemnify and hold Seller harmless from and against any and all liability, loss, damages, outlay and expense resulting from the incident causing the injury.
- SOLVENCY OF BUYER:** By submitting any purchase order or other writing, either prior to or subsequent to the date of Seller's invoice, Buyer represents that it is solvent for the purposes of U.C.C. Section 2-702 and that it is not insolvent as defined by U.C.C. Section 1-201 (23). In the absence of written notification of insolvency, the transmission of any writing by Buyer to Seller during the course of performance of the contract will be understood to constitute a written representation of continued solvency for the purposes of U.C.C. Section 2-702(2).
- TOOLS AND OTHER ITEMS:** Unless other expressly provided, the Seller shall retain title to and possession of any models, drawings, patterns, dies, molds, jigs, fixtures and tools made for or obtained for the furnishing of the contract.
- ASSIGNMENT AND DELEGATIONS:** Buyer shall not assign any rights or delegate any duties under the contract without the express written consent of Seller.
- STATUTE OF LIMITATIONS:** Buyer agrees that any action of any kind by the Buyer against the Seller must be commenced on or before the first anniversary of the date on the right, claim, demand or cause of action shall have first occurred.
- ARBITRATION:** All controversies and claims arising out of or relation to the contract, or any alleged breach thereof, shall be settled by arbitration proceedings in the City or State where Seller's place of business, as shown on the face of this invoice, is located, in accordance with the rules then pertaining of the American Arbitration Association, and judgment upon any award thereon may be entered in any court having jurisdiction thereof.
- MODIFICATION AND TERMINATION:** The contract shall not be modified or terminated and no cancellation, modification, termination or waiver of these terms and conditions shall be valid unless expressly agreed in writing. No waiver of any default hereunder shall be deemed a waiver of the obligation of future compliance, and any provision waived shall remain in full force and effect. Seller may cancel any unfulfilled part of the contract without any liability at once if and when Buyer shall become bankrupt or insolvent or shall make an assignment for the benefit of creditors or a receiver is appointed for Buyer.
- SOLE AGREEMENT:** This proposal contains the entire contract between Seller and Buyer and is a complete and exclusive statement of the terms and conditions thereof. No representations, understandings, conditions, or agreements have been made or relied upon in the making of this proposal other than those specifically set forth herein.
- CONSTRUCTION: THE CONTRACT SHALL BE GOVERNED BY AND ACCORDING TO THE LAWS OF THE STATE WHERE SELLER'S PLACE OF BUSINESS, AS SHOWN ON THE FACE OF THIS INVOICE IS LOCATED.**